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COA NO. 64711-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Dependency of J.M.R., a Minor,

STATE OF WASHINGTON/DSHS,

Respondent,

v.

JOHN ROUSSEAU,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Bruce I. Weiss, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in terminating appellant's parental rights under Chapter 13.34 RCW.

2. Appellant received ineffective assistance of counsel.

3. The trial court violated appellant's right to constitutional due process.

Issues Pertaining to Assignments of Error

1. Appellant stipulated to the termination of his parental rights under Chapter 13.34 RCW. Is vacature of the termination order required because the trial court lacked statutory authority to enter a stipulated termination order under Chapter 13.34 RCW?

2. The trial court violated appellant's right to due process when it refused to enter an order of indigency for appellant's appeal from the underlying judgment. Appellant received ineffective assistance of counsel when his previous counsel failed to perfect the appeal from the underlying order terminating parental rights, which caused the appeal to be dismissed. As a result, should this Court reinstate appellant's appeal from the underlying judgment and address the merits of his claim using standards that would have applied to the original appeal?

B. STATEMENT OF THE CASE

John Rousseau is the father of J.M.R. (d.o.b. 7/12/02). CP 86. Rousseau suffered from cancer and poor health, and his prognosis for recovery was uncertain. CP 74. The State filed a petition to involuntarily terminate Rousseau's parental rights. CP 276-86. Rousseau denied the State's allegations that he was an unfit father and that termination was required. CP 256-58.

Before a termination trial began, J.M.R.'s mother voluntarily relinquished her parental rights pursuant to Chapter 26.33 RCW and signed an open adoption agreement. CP 22, 82. Rousseau's case proceeded to trial. CP 22.

In the late afternoon of April 14, 2009 on the second day of the termination trial, Rousseau stipulated the State had established the requisite statutory requirements for termination. CP 67, 86-89. After questioning Rousseau, the trial court entered an order terminating parental rights on the basis of that stipulation. 1RP[1] 2-13; CP 86-89. Rousseau also entered into an open adoption agreement. 1RP 2; CP 23, 67.

This paperwork was presented to Rousseau after an in-chambers meeting with the judge and the attorneys. CP 68, 78. Based on what was

[1] The verbatim report of proceedings is referenced as follows: 1RP - 4/14/09; 2RP - 9/18/09.

said during this meeting, counsel told Rousseau the chance of success at trial was slim and that he had negotiated two additional visits as part of an open adoption agreement. CP 68, 74, 77.

Counsel believed Rousseau had a meritorious defense against termination because the State did not provide required services and never identified parental deficiencies. CP 55. He persuaded his client to stipulate to termination and enter an open adoption agreement based on the belief that his client would not live to see himself prevail on appeal. CP 55. Rousseau's attorney, the guardian ad litem's attorney and the assistant attorney general (AAG) told Rousseau the open adoption agreement was the best way to go if he wanted to see his son. CP 74-75.

The day after signing the stipulation, Rousseau told his attorney that he did not understand that he was giving up his rights to his child and felt coerced into signing the paperwork. CP 75. They discussed appealing the stipulation. CP 75. On May 14, 2009, Rousseau filed a timely notice of appeal from the termination order. CP 91-95.

The trial court refused to sign an order of indigency allowing Rousseau to appeal at public expense. 2RP 13-14. A Court of Appeals

commissioner ultimately dismissed the appeal due to counsel's failure to perfect the appeal. Appendix A at 2.[2]

On October 8, 2009, Rousseau's trial counsel filed a CR 60(b) motion to withdraw his stipulation and vacate the order terminating parental rights. CP 66-72. Rousseau's counsel stated "My biggest concern is that I think I was too persuaded by the argument raised by the GAL's attorney that given Mr. Rousseau's medical history his prospects for surviving until the end of an appeal did not look good. This argument has been proven wrong. Mr. Rousseau's health has continued to improve since the trial." CP 54.

Under CR 60(b)(3), counsel argued Rousseau's improved health since termination constituted newly discovered evidence and that the State wrongly used Rousseau's sickness and prognosis to "persuade him into making a decision he was not comfortable in making." CP 70. Under CR 60(b)(4), counsel argued the State engaged in fraud, misrepresentation or misconduct by reneging on the open adoption agreement. CP 71, 78-79. Under CR 60(b)(11), counsel argued the State did not handle Rousseau's case properly and that Rousseau's fear of death contributed to his agreement to the termination stipulation. CP 71.

[2] Appendix A consists of the Court of Appeals file under No. 63514-0-I.

Counsel further argued Rousseau was confused about the stipulation paperwork he signed and did not understand that he was giving up his parental rights. CP 67, 68-69.

Counsel also argued he may have been ineffective in failing to insist "on having his client sign relinquishment documents." CP 71-72. Rousseau's attorney stated "it was probably a mistake to have not held out for relinquishment paperwork for Mr. Rousseau to sign instead of having my client stipulate to the termination. Had Mr. Rousseau relinquished, he would have at least had the 48 hours to change his m[i]nd given the facts of the case, I believe I could have gotten relinquishment paperwork from the AAG instead of the stipulation. Mr. Rousseau had contacted me within 48 hours to tell me that he wanted to challenge the stipulation." CP 56.

The State opposed the motion to withdraw the stipulation and vacate the termination order, arguing Rousseau entered into the stipulation knowingly, intelligently and voluntarily and that he could not meet any of the requirements for vacature under CR 60(b). CP 24.

According to the AAG, the adoption was ready to go forward. CP 23; 2RP 16. The AAG argued Rousseau's motion should be denied because it would disrupt J.M.R.'s prospective permanence. CP 28-29, 31-32.

Addressing CR 60(b)(11), the AAG maintained "There is nothing in the record to indicate that the court departed from accepted judicial practice or that the court incorrectly applied or administered the termination or dependency statutes. Nor is it irregular to allow a party to knowingly, intelligently, and voluntarily stipulate to the elements of a termination petition." CP 32.

The AAG acknowledged the stipulation was not entered under Chapter RCW 26.33, the adoption statute. CP 25. The AAG explained the "Department refused to allow Mr. Rousseau to sign voluntary relinquishment paperwork under Chapter 26.33 RCW because that would have allowed Mr. Rousseau 48 hours to revoke his consent and potentially force the Department to schedule a new trial date and reschedule the witness it had called off. The resulting delay in permanence for [J.M.R.] was not justifiable. Accordingly, the Department insisted on a stipulation to the elements of the termination petition." CP 22-23.

The trial court denied the motion to withdraw the stipulation and vacated the termination order, finding Rousseau entered into the stipulation knowingly, voluntarily and intelligently and relief was unavailable under CR 60(b). CP 19. This appeal follows. CP 4-8, 14-17.

C. ARGUMENT

1. THE COURT ERRED IN FAILING TO VACATE THE ORDER TERMINATING PARENTAL RIGHTS BECAUSE IT LACKED STATUTORY AUTHORITY TO ENTER THAT ORDER.

The trial court lacked statutory authority to enter an order terminating parental rights based on a stipulation that the State proved all the elements of its case. The stipulation was in reality a voluntary relinquishment without the required 48-hour procedural safeguard allowing for revocation. Vacature of the termination order is required because the court erred as a matter of law in acting without statutory authority.

a. Statutory Law Specifies The Means By Which Parental Rights May Be Terminated.

Parents have a fundamental liberty interest in the care and custody of their children protected by the Fourteenth Amendment of the United States Constitution and article I, section 3 of the Washington Constitution. Santosky v. Kramer, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); In re Dependency of V.R.R., 134 Wn. App. 573, 581, 141 P.3d 85 (2006). Children have a corollary interest in having the affection and care of their natural parents. Moore v. Burdman, 84 Wn.2d 408, 411, 526 P.2d 893 (1974). The fundamental due process right to the preservation of family integrity "encompasses the reciprocal rights of both parent and

children." Duchesne v. Sugarman, 566 F.2d 817, 825 (2d Cir. 1977). The State does not dispute Rousseau and his son shared love and affection for one another. CP 28.

"[C]ourts undertake a grave responsibility when they deprive parents of the care, custody and control of their natural children." In re Welfare of Sego, 82 Wn.2d 736, 738, 513 P.2d 831 (1973). For this reason, statutes providing for the termination of parental rights are strictly construed. In re Adoption of Lybbert, 75 Wn.2d 671, 674, 453 P.2d 650 (1969).

The power of the superior court to terminate parental rights is governed by statute. Parental rights can be lawfully terminated in only one of two ways.

First, parents can voluntarily relinquish their parental rights under the statutory procedures set forth in Chapter 26.33 RCW. RCW 26.33.020(11) defines "relinquishment" as "the voluntary surrender of custody of a child to the department, an agency, or prospective adoptive parents." The court terminates parental rights upon granting a petition for relinquishment. RCW 26.33.090(4); RCW 26.33.130(1).

If a parent does not voluntarily relinquish parental rights pursuant to Chapter 26.33 RCW, parental rights are subject to involuntary

termination under the statutory procedures set forth in Chapter 13.34 RCW.

Parents facing involuntary termination of their parental rights have the right to a fact finding hearing before a judge. RCW 13.34.180; RCW 13.34.090(1). RCW 13.34.190 provides:

> After hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child *only if the court finds* that:
>
> (1)(a) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or
>
> (b) The provisions of RCW 13.34.180(1)(a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1)(c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1)(c) and (d) may be waived; or
>
> (c) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1)(e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or
>
> (d) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and
>
> (2) Such an order is in the best interests of the child.

(emphasis added).

Every parent has the right to "receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder." RCW 13.34.090(1). Contrary to the requirements of RCW 13.34.190, the court did not find the requirements of RCW 13.34.180(1) had been established by clear, cogent and convincing evidence and that a termination order was in the child's best interests based on evidence produced at the termination trial. Rousseau stipulated to these conclusions. The court did not make its own findings based on the evidence. 1RP 2-13; CP 86-89. It merely entered an order terminating parental rights based on the stipulation.

b. The Court Lacked Authority To Terminate Rousseau's Parental Rights Based On The Stipulation.

The stipulation and order terminating Rousseau's parental rights described the action as a "voluntary termination." CP 87. The trial court entered an order terminating Rousseau's parental rights pursuant to RCW 13.34.190. CP 88.

The purported "voluntary termination" of parental rights in Rousseau's case is without statutory authority. Procedures for the involuntary termination of parental rights found in Chapter 13.34 RCW do not provide for the voluntary stipulation to the termination of parental

rights. Established principles of statutory construction compel this conclusion.

The meaning of a statute is a question of law reviewed de novo, as is the scope of the superior court's authority under a statute. In re Dependency of T.L.G., 139 Wn. App. 1, 16, 156 P.3d 222 (2007); Waples v. Yi, 146 Wn. App. 54, 58, 189 P.3d 813 (2008). The goal of statutory construction is to carry out legislative intent. Kilian v. Atkinson, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). When the meaning of a statute is clear on its face, the appellate court assumes the legislature means exactly what it says. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). "[C]ourts are to give effect to that plain meaning as an expression of legislative intent." State v. Thompson, 151 Wn.2d 793, 801, 92 P.3d 228 (2004). For this reason, courts "may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute." Kilian, 147 Wn.2d at 21.

Again, statutes providing for the termination of parental rights are strictly construed. Lybbert, 75 Wn.2d at 674. Chapter 13.34 RCW does not specify a parent may stipulate to the termination of parental rights. If the Legislature had wanted to allow the trial court to terminate parental rights based on a stipulation, then it would have said precisely this in the statute. State v. Salavea, 151 Wn.2d 133, 144, 86 P.3d 125 (2004).

Courts "cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language." Salavea, 151 Wn.2d at 144 (quoting Delgado, 148 Wn.2d at 727).

Significantly, RCW 13.34.110(3)(a), which applies to the earlier dependency and disposition stage, specifically allows a parent to waive the right to a fact-finding hearing by stipulating or agreeing to the entry of an order of dependency establishing that the child is dependent within the meaning of RCW 13.34.030 and to an order of disposition pursuant to RCW 13.34.130.

No such comparable provision exists under RCW 13.34.180 and .190, which govern termination of parental rights under the Chapter 13.34 RCW. It is an "elementary rule that where the Legislature uses certain statutory language in one instance, and different language in another, there is a difference in legislative intent." United Parcel Serv., Inc. v. Dep't of Revenue, 102 Wn.2d 355, 362, 687 P.2d 186 (1984). The omission of a provision in a particular statute is deemed purposeful where the provision appears in a closely related statute. State v. Hubbard, 106 Wn. App. 149, 153-54, 22 P.3d 296 (2001); Clallam County Deputy Sheriff's Guild v. Bd. of Clallam County Comm'rs, 92 Wn.2d 844, 851, 601 P.2d 943 (1979); see Public Utility Dist. No. 1 of Pend Oreille County v. Dep't of Ecology, 146 Wn.2d 778, 797, 51 P.3d 744 (2002) ("Because

the Legislature omitted consideration of the public interest from RCW 90.03.380 where it included such a requirement in other closely related statutes, we conclude that Legislative intent is clear that a 'public interest' test is not a proper consideration when Ecology acts on a change application under RCW 90.03.380.").

The same principle of statutory construction applies to the broader comparison between the termination and adoption statutes. These statutes are closely related in that both allow for termination of parental rights. The adoption statute allows for voluntary relinquishment, which is in essence a stipulation surrounded by safeguards allowing for its timely revocation. Again, no such comparable provision appears in the termination statute. The termination statute does not allow for voluntary relinquishment of parental rights by means of stipulation.

When the Legislature wanted to authorize voluntary stipulation as a means to give up a parent's constitutional right to the care and custody of his or her child, it expressly did so under RCW 13.34.110(3)(a) and Chapter 26.33 RCW. The statutory provisions governing involuntary termination of parental rights do not contain any such authorization.

Elementary principles of statutory construction compel the conclusion that the Legislature purposefully declined to grant statutory authority for the voluntary termination of parental rights by means of

stipulation. Cf. In re Marriage of Furrow, 115 Wn. App. 661, 663-64, 669, 673, 63 P.3d 821 (2003) (trial court's failure to operate within the statutory framework of the adoption statute rendered termination order entered in parenting plan modification action voidable); see also Kristine M. v. David P., 135 Cal. App. 4th 783, 791-92, 37 Cal. Rptr. 3d 748 (Cal. Ct. App. 2006) (trial court acted without authority in accepting the parties' stipulation as an adequate basis to terminate child's parental rights; it is only under specified circumstances, and upon specific findings that include the interests of the child, that a court has authority to terminate parental rights); In re Marriage of Jackson, 136 Cal. App. 4th 980, 990, 39 Cal. Rptr. 3d 365 (Cal. Ct. App. 2006) ("A court cannot enter a judgment terminating parental rights based solely upon the parties' stipulation that the child's mother or father relinquishes those rights.").

The trial court in this case had two statutorily authorized options upon being presented with Rousseau's intention to voluntarily terminate his parental rights. First, it could comply with the voluntary relinquishment procedures set for in Chapter 26.33 RCW. Second, it could enter independent findings of fact and conclusions of law after a fact finding hearing as required by RCW 13.34.190. There are no other options. The option of voluntarily stipulating to the termination of parental rights under Chapter 13.34 RCW does not exist.

Rousseau entered into the stipulation in pursuit of an open adoption agreement, which the trial court accepted in the course terminating Rousseau's parental rights under the termination statute. The Legislature has not authorized open adoption agreements under Chapter 13.34 RCW, the termination statute. The Legislature has authorized open adoption agreements only under the adoption statute. RCW 26.33.295. The same statute that allows for voluntary relinquishment only under certain mandated conditions.

The stipulation to termination of parental rights here is a de facto voluntary relinquishment without its mandatory procedural safeguards. The State, by insisting on this course of action, did an end run around the requirements of the voluntary relinquishment process.

Various safeguards surround a voluntary relinquishment decision. RCW 26.33.160. Of particular importance here, the parent consenting to adoption has the right to revoke that consent at any time before the court approves the consent. RCW 26.33.160(2)(a). A consent to adoption must not be presented to the court until 48 hours after it is signed. RCW 26.33.160(4)(d). A hearing on voluntary relinquishment may not be held sooner than 48 hours after the signing of all necessary consents to adoption. RCW 26.33.090(1).

The adoption statute procedure allowing parents to voluntarily relinquish their children balances the strong public interest in the finality of the adoption process with the countervailing interest in preventing a parent's ill-conceived, abrupt decision to relinquish his or her child. In re Interest of Perry, 31 Wn. App. 268, 274, 641 P.2d 178 (1982); In re Adoption of Baby Girl K. 26 Wn. App. 897, 905-06, 615 P.2d 1310 (1980). The 48-hour waiting requirement exists to prevent a parent's rash decision to relinquish a child. Baby Girl K., 26 Wn. App. at 906.

The State insisted Rousseau not be allowed to voluntarily relinquish his parental rights in accordance with Chapter 26.33 RCW. It specifically did so to avoid the possibility that Rousseau could change his mind within 48 hours of signing a consent to adoption. CP 22-23. As it turns out, Rousseau changed his mind about voluntarily terminating his parental rights the day after entering the stipulation at issue here and filed a timely notice of appeal. CP 75, 91-95.

In addressing whether appeal could be taken from a termination order entered by stipulation, the trial court stated:

> [W]hen I represented the guardian ad litem's office it frequently happened where people would agree, in essence, to give up their rights in the middle of a trial, and I'm not aware of them ever doing it by way of a relinquishment in the middle of a trial, it's always by stipulation, because the effect is immediate instead of having to wait, because the chances are and likelihood is that somebody enters into a

> relinquishment and they're not in the pressure of the situation at that time that perhaps they may try to revoke it or withdraw it, and that's why it's part of the reason why they don't do it.

2RP 13.

This statement is worthy of comment for a few reasons. First, the judge's personal experience that stipulated terminations were carried out in the past does not mean they were statutorily authorized. Second, whether the State routinely insists on stipulated terminations once the termination trial has begun has no bearing on whether that course of action is statutorily authorized.

Third, the trial court's remarks, like the AAG's stated position for why he insisted on stipulated termination outside the strictures of the adoption statute, betray a grievous misconception about the significance of the 48 hour waiting requirement. That requirement exists to protect parents. The State in this case viewed it as an impediment to termination and therefore dispensed with it altogether. The State received the benefit of a voluntary termination without having to honor the 48 hour safeguard designed to prevent an ill-conceived and abrupt decision to relinquish the fundamental right to the care and custody of one's child — a right that courts have described as "sacred" and "'more precious to many people than the right of life itself.'" In re Welfare of Sumey, 94 Wn.2d 757, 762, 621

P.2d 108 (1980); In re Welfare of Luscier, 84 Wn.2d 135, 137, 524 P.2d 906 (1974) (quoting In re Welfare of Gibson, 4 Wn. App. 372, 379, 483 P.2d 131 (1971)). The State's end run around the revocation safeguard should not be countenanced. The trial court's decision to enter a stipulated termination order it had no authority to enter cannot be pardoned.

The trial court and both parties analogized Rousseau's stipulation to the termination of his parental rights as analogous to a guilty plea in a criminal proceeding. CP 25-26; 2RP 12. The analogy is sound. Rousseau's stipulation to the termination of his parental rights admitted all the elements of the State's case, leaving the State with nothing to prove in order to prevail. A stipulation that gives up a fundamental right in this manner is analogous to a criminal plea agreement. See In re Detention of Scott, 150 Wn. App. 414, 426, 208 P.3d 1211 (2009) (analogizing criminal plea agreement to stipulation in civil involuntary commitment proceeding under Chapter 71.09 RCW because of due process protections attendant to both).

A criminal plea agreement is surrounded by due process and statutory safeguards that cannot be dispensed with simply by calling the plea agreement something other than what it is. CrR 4.2; State v. Mendoza, 157 Wn.2d 582, 587, 141 P.3d 49 (2006). A defendant would never be allowed in the midst of trial to "stipulate" to *all* the elements of

the State's case in lieu of guilty plea. Due process and statutory safeguards could not be bypassed in this manner.

But the analogous statutory safeguard was bypassed in Rousseau's case. Rousseau's stipulation is nothing but a voluntary relinquishment without the requisite 48 hour statutory safeguard. Statutory authority for this mode of termination does not exist.

Rousseau's entry into the stipulation does not waive the issue for appeal. See In re Pers. Restraint of Gardner, 94 Wn.2d 504, 507, 617 P.2d 1001 (1980) (a plea bargaining agreement cannot exceed the statutory authority given to the courts); State v. Gronnert, 122 Wn. App. 214, 224-25, 93 P.3d 200 (2004) (trial court exceeded statutory authority by accepting plea agreement and therefore invited error doctrine did not apply); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 867-74, 50 P.3d 618 (2002) (an individual cannot, by way of a negotiated plea agreement, agree to a sentence in excess of that allowed by law and cannot waive such a challenge); In re Pers. Restraint of West, 154 Wn.2d 204, 214, 110 P.3d 1122 (2005) ("even where a defendant clearly invited the challenged sentence by participating in a plea agreement, to the extent that he or she 'can show that the sentencing court exceeded its statutory authority, the invited error doctrine will not preclude appellate review.'") (quoting State v. Phelps, 113 Wn. App. 347, 354, 57 P.3d 624 (2002)).

Moreover, if any party invited error here, it is the State. Rousseau preferred to do the statutorily authorized voluntary relinquishment under Chapter 26.33 RCW, the adoption statute. The State insisted on the unauthorized stipulation rather than voluntary relinquishment. CP 22-23.

c. The Underlying Appeal Should Be Reinstated Due To Unlawful Court Action And Ineffective Assistance Of Counsel.

The present appeal is in the form of an appeal from the denial of a CR 60(b) motion to vacate the final termination order. Previous counsel, however, provided ineffective assistance in failing to perfect the original appeal from the underlying judgment, which caused its dismissal. The trial court, meanwhile, deprived Rousseau of his right to due process when it refused to sign an order of indigency for the original appeal. As a result of these errors, the original appeal should be reinstated and the claimed error subject to the standard and scope of review applicable to the original appeal from the underlying judgment.

Rousseau's trial counsel filed a timely notice of appeal from the order terminating parental rights. CP 91-95. The trial court repeatedly refused to sign an order of indigency necessary to perfect the appeal. At the hearing denying Rousseau's motion to vacate the termination order, the court explained "I know you have consistently requested me to sign documents in relation to waiving the fee for appeal previously. There

were, from my perspective, no issues to appeal. Now there is. So if you want to present those documents, I'll sign a waiver in relation to costs related to appeal. This issue you can appeal, but there was nothing before this that was appealable." 2RP 13-14.

The trial court is dead wrong that Rousseau could not appeal the termination order itself. Every parent has the right to appeal an order terminating parental rights. RAP 2.2(a)(6); In re Dependency of M.A., 66 Wn. App. 614, 622, 834 P.2d 627 (1992). The right to appeal does not turn on the personal judgment of the trial judge as to whether there is an issue to appeal.

Nor does the trial judge get to decide whether there is an issue to appeal as a prerequisite to issuing an order of indigency. RAP 15.2 (b)(1)(b) provides the trial court "shall grant the motion for an order of indigency if the party seeking public funds is unable by reason of poverty to pay for all or some of the expenses for appellate review of . . . termination cases under Ch. 13.34." Where a civil litigant has a statutory right to counsel at all stages of the court proceeding, that right includes a right to counsel on appeal and the right to public funding of the expenses necessarily incident to effective appellate review. In re Dependency of Grove, 127 Wn.2d 221, 241-42, 897 P.2d 1252 (1995). The plain language of RAP 15.2 requires the trial court to enter an order of

indigency if a party is unable to pay appeal expenses due to poverty. That is the only relevant criterion. Grove, 127 Wn.2d at 241-42. Litigants need not prove the probable merit of their claims in order to appeal at public expense. Id. at 233.

The trial judge, in erroneously refusing to sign an order of indigency for Rousseau's appeal from the termination order, contributed to the denial of Rousseau's right to appeal. The trial court violated Rousseau's constitutional right to due process in refusing to sign the indigency order. Evitts v. Lucey, 469 U.S. 387, 403-05, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985) (due process violated where state grants right to appeal but denies indigent defendant fair opportunity to obtain adjudication on merits of appeal). An indigent's right to counsel without a corresponding right to present a record to the reviewing court is an empty right. Grove, 127 Wn.2d at 234.

Rousseau's counsel, meanwhile, provided ineffective assistance in failing to perfect the appeal. The appeal was ultimately dismissed due to counsel's failure to file (1) an order of indigency or filing fee; (2) proof of service for the notice of appeal; (3) a designation of clerk's papers; and (4) a statement of arrangements. Appendix A at 2.

As a result of that incompetent appellate representation, Rousseau's present appeal should be treated as a reinstatement of his previous appeal

and its merits judged under the standards applicable to a direct appeal from the underlying judgment.

Relevant authority compels this conclusion. Rousseau had the right to counsel. RCW 13.34.090. In every case in which the right to counsel attaches, legal representation by definition means effective representation. In re Welfare of J.M., 130 Wn. App. 912, 922, 125 P.3d 245 (2005); RCW 10.101.005. The right to effective representation extends to the appeal stage. Grove, 127 Wn.2d at 233. Rousseau therefore had the right to effective assistance of counsel on his original appeal.

The failure to perfect an appeal, including the failure to timely file a requested notice of appeal, constitutes ineffective assistance of counsel. Evitts, 469 U.S. at 390-92; Cannon v. Berry, 727 F.2d 1020, 1022-23 (11th Cir. 1984) (failure to file a brief on direct appeal is ineffective assistance of counsel); In re Pers. Restraint of Frampton, 45 Wn. App. 554, 559, 726 P.2d 486 (1986) (number of courts hold where appeal was either not timely perfected or was dismissed for failure to file an appellate brief, then personal restraint petitioner has suffered prejudice per se). "Counsel's failure to perfect an appeal 'essentially waive[s] respondent's opportunity to make a case on the merits; in this sense it is difficult to distinguish respondent's situation from that of someone with no counsel at all.'"

Beasley v. State, 126 Idaho 356, 361, 883 P.2d 714 (Idaho Ct. App. 1994) (quoting Evitts, 469 U.S. at 394 n.6).

In that circumstance, counsel's performance is deficient and the client suffers per se prejudice. Frampton, 45 Wn. App. at 559-60; State v. Wicker, 105 Wn. App. 428, 431-32, 20 P.3d 1007 (2001); Lozada v. Deeds, 498 U.S. 430, 430-32, 111 S. Ct. 860, 112 L. Ed. 2d 956 (1991). If a defendant is deprived of his appeal because of ineffective assistance of counsel, then he has been denied due process of law. Frampton, 45 Wn. App. at 558 n. 3. Moreover, if a state court chooses to dismiss an appeal when an incompetent attorney has violated local rules, it may do so only if such action does not intrude upon the client's due process rights. Evitts, 469 U.S. at 399, 400-01.

The remedy is reinstatement of the appeal, which the reviewing court should address under the standards applicable to direct review of a final underlying judgment. Frampton, 45 Wn. App. at 558, 563; Beasley, 126 Idaho at 361 (defendant denied an appeal because his lawyer did not file an appeal as requested should be restored to the status enjoyed immediately following the judgment of conviction when the defendant was entitled to a direct appeal). Under RAP 1.2(c) and RAP 7.3, this Court has the authority to determine whether a matter is properly before it, to perform those acts that are proper to secure fair and orderly review, and

to waive the rules of appellate procedure when necessary to serve the ends of justice. State v. Aho, 137 Wn.2d 736, 740-41, 975 P.2d 512 (1999).

"Those whose right to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings." Rodriquez v. United States, 395 U.S. 327, 330, 89 S. Ct. 1715, 23 L. Ed. 2d 340 (1969) (counsel's failure to perfect appeal constituted ineffective assistance).

This principle finds illustration in Wicker, where counsel was ineffective in failing to timely filing of a notice for revision, which deprived her client of the right to seek revision of a trial commissioner's ruling finding her guilty of a crime. Wicker, 105 Wn. App. at 430. This Court rejected the State's argument that Wicker was not prejudiced and her attorney's conduct was not deficient because she still retained her right to appeal to this Court. Id. at 432-33. It did so because the right to revision is different from the ability to appeal to the court of appeals. First, the standard of review on revision is de novo, thus allowing a superior court judge to reach a different conclusion without being bound by the commissioner's findings and conclusions. Id. Second, on appeal, this Court's review is far more deferential to the commissioner's ruling than it is to the superior court's determination. Id. at 433.

In short, Wicker suffered per se prejudice when her counsel failed to timely seek review of the commissioner's ruling because that failure deprived Wicker of a more favorable scope and standard of review at the revision stage and subjected her to a harsher standard of review in the Court of Appeals.

The same type of concern presents itself here. Counsel's ineffectiveness in causing dismissal of the appeal from the termination order has placed additional hurdles to relief in front of Rousseau as he now seeks to overturn the termination order.

First, there are time limits to a CR 60(b) motion that can prevent relief. Depending on the ground invoked, such a motion must be made within one year or within a "reasonable time" from entry of the final order. CR 60(b). The State argued Rousseau's CR 60(b)(11) motion was time-barred at the trial level. CP 32. There is no time bar issue if Rousseau's original appeal from the termination order is reinstated.

Second, the scope of review is severely limited on appeal from the denial of a CR 60(b) motion. CR 60(b) is not a substitute for an appeal. Bjurstrom v. Campbell, 27 Wn. App. 449, 452, 618 P.2d 533 (1980). "An appeal from denial of a CR 60(b) motion is limited to the propriety of the denial not the impropriety of the underlying judgment." Bjurstrom, 27 Wn. App. at 450-51. Appellate counsel's ineffectiveness in failing to perfect

the original appeal from the underlying judgment has put Rousseau in a worse position in terms of scope of review.

Third, different standards of review are potentially applicable depending on whether this Court treats this appeal as a simple challenge to denial of the CR 60(b) motion or reinstates the original appeal from the termination order. A superior court's decision to vacate a judgment under CR 60(b) is within its discretion and will be overturned on appeal only where it plainly appears that the court has abused its discretion. Haller v. Wallis, 89 Wn.2d 539, 543, 573 P.2d 1302 (1978).

If the original appeal is reinstated, then there is no question that the standard of review is de novo. When a statute provides a trial court with certain powers, and a party challenges whether the trial court's action exceeded those powers, the standard of review is de novo. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007) ("the key question in this case is not whether the trial court abused its discretion in exercising admittedly existing authority, but rather whether the trial court had any authority under the SRA to impose the no-contact order at issue. Because this case hinges on a matter of statutory interpretation, de novo is the appropriate standard of review."); State v. Murray, 118 Wn. App. 518, 521, 77 P.3d 1188 (2003) (whether a trial court has exceeded its statutory authority under the Sentencing Reform Act is an issue of law review de

novo); Coulter v. Asten Group, Inc., __Wn. App.__, __P.3d__, 2010 WL 1174781 at *7 n.1 (slip op. filed Jan. 11, 2010) (whether the trial court exceeded its statutory authority is subject to de novo review).

Finally, relief under CR 60(b)(11) is generally confined to extraordinary circumstances. In re Marriage of Tang, 57 Wn. App. 648, 655-56, 789 P.2d 118 (1990). Those circumstances must relate to "irregularities extraneous to the action of the court or questions concerning the regularity of the court's proceedings." In re Marriage of Yearout, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985). Irregularities are distinct from simple errors of law:

> [I]rregularities justify vacation [under CR 60(b)(11)] whereas errors of law do not. For the latter the only remedy is by appeal from the judgment. The power to vacate for irregularity is not to be used by a court as a means to review or revise its judgments or to correct mere errors of law into which it may have fallen . . . Viewing the problem more generally it appears that an irregularity is regarded as a more fundamental wrong, a more substantial deviation from procedure than an error of law. An irregularity is deemed to be of such character as to justify the special remedies provided by vacation proceedings, whereas errors of law are deemed to be adequately protected against by the availability of the appellate process.

Furrow, 115 Wn. App. at 674 (quoting Philip A. Trautman, Vacation and Correction of Judgments in Washington, 35 Wash. L. Rev. 505, 515 (1960)).

If Rousseau's original appeal is reinstated based on prior ineffective assistance of counsel and denial of due process, he need not show "extraordinary circumstances" justify relief or that the trial court's error constituted a procedural "irregularity" above and beyond an error of law.

On appeal from the underlying judgment, a trial court order entered without statutory authority must be vacated as an error of law. In re Placement of R.J., 102 Wn. App. 128, 134-36, 5 P.3d 1284 (2000) (vacating trial court order directing placement of child due to lack of statutory authority); Gronnert, 122 Wn. App. at 225 (a court cannot accept a plea and enter a sentence that exceeds its statutory authority); Coulter, 2010 WL 1174781 at *3 (striking findings and conclusions that trial court lacked statutory authority to enter). Moreover, a court necessarily abuses its discretion in acting outside of its statutory authority. State v. Morse, 45 Wn. App. 197, 199, 723 P.2d 1209 (1986) (citing State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

"[W]hile the best interests of a child are of paramount importance, the manner of addressing those interests has been set forth by the Legislature. Courts are bound by that body's decisions even when they disagree with them." R.J., 102 Wn. App. at 136 n.4. That proposition applies to Rousseau's case. Either the trial court had statutory authority to

enter an order terminating parental rights on the basis of a stipulation or it did not. If it lacked authority to enter the order, then the order cannot stand.

Although the remedy for ineffective assistance of appellate counsel is generally reinstatement of the appeal and remand, this Court can immediately resolve the trial court error under standards applicable to the original appeal because the present record is sufficient to address the merits of the claim. In re Pers. Restraint of Dalluge, 152 Wn.2d 772, 788-89, 100 P.3d 279 (2004). This Court should reverse the order terminating Rousseau's parental rights because, as set forth in C. 1. b. supra, the court lacked statutory authority to enter that order in reliance on the stipulation.

D. CONCLUSION

For the reasons stated, Mr. Rousseau requests that this Court vacate the order terminating his parental rights.

DATED this 30th day of April 2010.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.

CASEY GRANNIS
WSBA No. 37301
Office ID No. 91051
Attorneys for Appellant

APPENDIX A

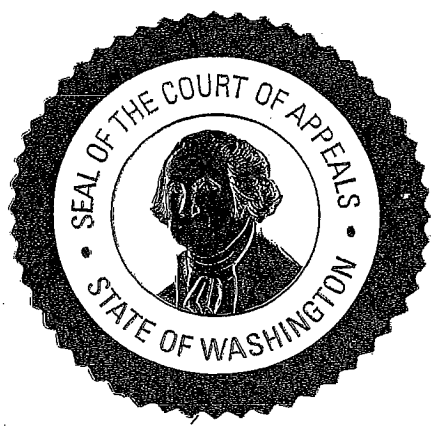
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

IN RE THE DEPENDENCY OF:	)	No. 63514-0-I
J.M.R., DOB: 7/12/02	)	MANDATE
A Minor Child.	)	Snohomish County
JOHN CHARLES ROUSSEAU,	)	Superior Court No. 08-7-00632-4
Appellant,	)	
v.	)	
STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES,	)	
Respondent.	)	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for Snohomish County.

This is to certify that the ruling entered on December 8, 2009 became the decision terminating review in the above case on January 29, 2010. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

c: Peter Carl Lawson
Martin Wade Hodges
Jennifer Lyn Coombs
Thomas Robinson O'Neill



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 29th day of January, 2010.

RICHARD D. JOHNSON
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
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98101-4170
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TDD: (206) 587-5505

December 9, 2009

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WA Attorney General
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Peter Carl Lawson
Jay Carey Law Offices
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Martin Wade Hodges
Attorney at Law
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Everett, WA. 98201-1414

Jennifer Lyn Coombs
Attorney at Law
1223 Broadway
Everett, WA. 98201-1715

CASE #: 63514-0-I
In re the Dependency of: J.M.R.; John Charles Rousseau, App. v. DSHS, Res.

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on December 8, 2009, regarding appellant's failue to file proof of service of the notice of appeal, an order of indigency or the filing fee, a designation of clerk's papers and statement of arrangements by November 18, 2009:

As the conditions of the October 21, 2009 Commissioner's ruliing have not been met, the appeal is accordingly dismissed.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

khn

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
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October 22, 2009

Thomas Robinson O Neill
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Martin Wade Hodges
Attorney at Law
Denny Juvenile Justice Center
2801 10th St 2nd Fl
Everett, WA. 98201-1414

Jennifer Lyn Coombs
Attorney at Law
1223 Broadway
Everett, WA. 98201-1715

CASE #: 63514-0-I
In re the Dependency of: J.M.R.; John Charles Rousseau, App. v. DSHS, Res.

Counsel:

The following notation ruling by Commissioner William Ellis of the Court was entered on October 21, 2009, regarding court's motion to show cause why sanctions should not be imposed for failure to provide an order of indigency or filing fee :

Counsel appeared and explained the status of the case. In view of that explanation, counsel shall have until November 18, 2009 to file the proof of service, an order of indigency or the filing fee, a designation of clerk's papers, and a statement of arrangements. If these steps are not accomplished by November 18, the appeal may be dismissed.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

khn

12-8-09
As the condition of the
10-21-09 Commissioner's ruling
have not been met, the appeal
is accordingly dismissed.

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
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September 14, 2009

Thomas Robinson O Neill
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Peter Carl Lawson
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2801 10th St 2nd Fl
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Jennifer Lyn Coombs
Attorney at Law
1223 Broadway
Everett, WA. 98201-1715

CASE #: 63514-0-I
In re the Dependency of: J.M.R.; John Charles Rousseau, App. v. DSHS, Res.

Counsel:

The following notation ruling by Commissioner William Ellis of the Court was entered on September 11, 2009, regarding court's motion to show cause why sanctions should not be imposed for failue to file an order of indigency:

Counsel appeared and indicated a motion to vacate is scheduled for consideration on October 2, 2009 and that appellant's request for an order of indigency has been denied. In light of the pending motion in the trial court, the appellate court motion is continued to 10:30 a.m. on October 16, 2009.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

khn

10-21-09
Counsel appeared and explained the stakes of the case. In view of that explanation, counsel shall have until November 18, 2009 to file the proof of service, an order of indigency on the filing fee, a designation of clerk's papers, and a statement of arrangements. If these steps are not accomplished by November 18, the appeal may be dismissed.
William Ellis

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
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July 14, 2009

Thomas Robinson O Neill
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Jennifer Lyn Coombs
Attorney at Law
1223 Broadway
Everett, WA. 98201-1715

CASE #: 63514-0-I
In re the Dependency of: J.M.R.; John Charles Rousseau, App. v. DSHS, Res.

Counsel:

The following notation ruling by Commissioner James Verellen of the Court was entered on July 10, 2009, regarding court's motion to show cause why sanctions should not be imposed for failure to file proof of service of the notice of appeal, an order of indigency, the designation of clerk's papers and statement of arrangements:

Counsel for Mr. Rousseau appeared and explained that a motion to vacate is set for argument in the trial court on August 21, 2009. He has also filed a request for an order of indigency in the trial court but does not yet have a formal ruling on that request. It appears that this appeal involves Mr. Rousseau's challenge to the termination entered upon his stipulation approved by the trial court. In these unusual circumstances additional time should be allowed especially to obtain a decision on the pending motion to vacate.

9-11-02
Counsel appeared and indicated a motion to vacate is scheduled for consideration on October 2, 2009 and that appellant's request for an order of indigency has been denied. In light of the pending motion in the trial court, the appellate court motion is continued to 10:30 am on October 16, 2009.

Therefore, it is

ORDERED that the court's motion is set over to **Friday, September 4, 2009 at 10:30 a.m.** to allow appellant to pursue his pending motion to vacate in the trial court and to obtain a formal ruling on his pending motion for an order of indigency.

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

khn

Verellen, James

From: Verellen, James
Sent: Friday, July 10, 2009 6:20 PM
To: Nakamichi, Karin
Subject: Dependency of JMR No. 63514-0

Please send this ruling to counsel:

NOTATION RULING
Dependency of JMR No. 63514-0
July 10, 2009

Counsel for Mr. Rousseau appeared and explained that a motion to vacate is set for argument in the trial court on August 21, 2009. He has also filed a request for an order of indigency in the trial court but does not yet have a formal ruling on that request. It appears that this appeal involves Mr. Rousseau's challenge to the termination entered upon his stipulation approved by the trial court. In these unusual circumstances additional time should be allowed, especially to obtain a decision on the pending motion to vacate.

Therefore, it is
ORDERED that the court's motion is set over to Friday, September 4, 2009 at 10:30 a.m. to allow appellant to pursue his pending motion to vacate in the trial court and to obtain a formal ruling on his pending motion for an order of indigency.

James Verellen
Court Commissioner

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
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Seattle, WA
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June 18, 2009

Thomas Robinson O Neill
WA Attorney General
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Martin Wade Hodges
Attorney at Law
Denny Juvenile Justice Center
2801 10th St 2nd Fl
Everett, WA. 98201-1414

Jennifer Lyn Coombs
Attorney at Law
1223 Broadway
Everett, WA. 98201-1715

CASE #: 63514-0-I
In re the Dependency of: J.M.R.; John Charles Rousseau, App. v. DSHS, Res.

Counsel:

The following notation ruling by Commissioner Mary Neel of the Court was entered on June 17, 2009, regarding court's motion to show cause why sanctions should not be imposed for failure to file proof of service of the notice of appeal, an order of indigency, the designation of clerk's papers and statement of arrangements:

No one appeared or responded to the court's motion set on June 12, 2009. Sanctions of $250 may be entered against appellant's counsel unless he **(1)** files proof of service of the notice of appeal, **(2)** files a copy of an order of indigency or pays the filing fee, **(3)** files the designation of clerk's papers, and **(4)** files the statement of arrangements. The court's motion is continued to **July 10, 2009 at 10:30 a.m.**

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

khn

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
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May 27, 2009

Thomas Robinson O Neill
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Peter Carl Lawson
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Martin Wade Hodges
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Jennifer Lyn Coombs
Attorney at Law
1223 Broadway
Everett, WA. 98201-1715

CASE #: 63514-0-I
In re the Dependency of: J.M.R.; John Charles Rousseau, App. v. DSHS, Res.
Snohomish County No. 08-7-00632-4

Counsel:

Pursuant to Supreme Court order, RAP 18.13A became effective October 21, 2008 and governs appeals from juvenile dependency disposition orders and orders terminating parental rights (copy enclosed). On May 14, 2009 a notice of appeal was filed in the above referenced matter. Counsel and/or the appellant failed to comply with the provisions of RAP 18.13A as indicated below:

(b) Copy of notice of appeal with proof of service not filed with the appellate court. __X___
(c) Order of indigency not filed contemporaneously with the notice of appeal. __X___
(e) Statement of arrangements not filed contemporaneously with the notice of appeal. __X_
(g) Designation of clerk's papers not filed contemporaneously with the notice of appeal. _X__

Counsel shall appear for a court's motion hearing on **June 12, 2009 at 10:30 a.m.** and show cause why sanctions should not be imposed, unless at least one day prior to the hearing, counsel cures the deficiencies.

June 17, 2009
No one appeared or responded to the court's motion set on June 12, 2009. Sanctions of $250 may be entered against appellant's counsel unless he (1) files proof of service of the notice of appeal, (2) files a copy of an order of indigency or pays the filing fee, (3) files the designation of clerk's papers, and (4) files the statement of arrangements. The court's motion is

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

khn

no fee
no serv

CERTIFIED COPY


CL13831605

FILED

2009 MAY 14 PM 4:35

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

Under penalty of perjury under the laws of the State of Washington, I certify that a copy of this document was delivered from Everett, Washington on _____, 2009 to the attorneys and parties listed below, _____.

Comm. Neel

SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH

IN RE THE DEPENDENCY OF:	63514-0
J.M.R.	NO. 08-7-00632-4
d.o.b. 7/12/02	NOTICE OF APPEAL TO COURT OF APPEALS

2009 MAY 19 AM 10:29
FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON

COMES NOW the father, John Charles Rousseau, by and through his attorney of record, Peter C. Lawson, and seeks review by the Court of Appeals, Division I, of the Snohomish County Superior Court's termination of the father's parental rights of the above referenced child. The father wishes to appeal the Stipulation of and Order on Termination of Parent-Child Relationship Regarding Father entered against him on April 15, 2009.

A copy of the decision is attached to this notice.

DATED this 19th day of May, 2009.

Peter C. Lawson, WSBA# 28886
Attorney for John Rousseau, Father

21 Due 4.15 Weiss w/order no SRN

JAY CAREY LAW OFFICES
420 North MacLeod
Arlington, WA 98223
(360) 435-5707

FILED
2009 APR 15 PM 2:36
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

ROU-10377881-TGR b

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

JUVENILE DIVISION

IN RE THE DEPENDENCY OF:	No. 08-7-00632-4 07-7-00614-8
ROUSSEAU, Julien Michael b.d. 07/12/02	**STIPULATION AND ORDER ON TERMINATION OF PARENT-CHILD RELATIONSHIP REGARDING FATHER** (Clerk's Action Required)

STIPULATION

I, John Michael Rousseau, the father of the above-named child, hereby stipulate to the following:

1. A petition seeking termination of my parental rights to the above-named child pursuant to RCW 13.34.180 was filed on April 30, 2008. I was served with the petition on April 18, 2008. The above-named child is not an Indian child as defined in 25 U.S.C. 1903.

2. I have been given notice of my right to be represented by an attorney, and I have been appointed an attorney.

3. The court has found the above-named child to be dependent pursuant to RCW 13.34.030(5), and the court has entered a Dispositional Order pursuant to RCW 13.34.130 which was filed on September 6, 2007.

ATTORNEY GENERAL OF WASHINGTON
Grenwich Building
3501 Colby Avenue #200
Everett, WA 98201
(425) 257-2170

45 EMT

4. Julien Michael Rousseau has been removed from my custody for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(5).

5. The services ordered under RCW 13.34.136 have been expressly and understandably offered or provided to me and all necessary services, reasonably available, capable of correcting my parental deficiencies within the foreseeable future have been expressly and understandably offered or provided to me.

6. There is little likelihood that conditions will be remedied so that the child can be returned to me in the near future.

7. Continuation of the parent and child relationship clearly diminishes the child's prospects of early integration into a stable and permanent home.

8. I realize that it is in the best interest of the above-named child that ~~all of my parental rights to Julien Michael Rousseau be permanently terminated.~~ Julien Michael Rousseau be placed with the family where he is currently living permanently.

9. I understand that the legal effect of this voluntary termination of my parental rights to the above-named child will be to divest me of all legal rights and obligations with respect to the child except for past due child support obligations. I also understand that the child will be freed from all legal obligations with respect to me, and shall be, for all legal purposes, the child, legal heir, and lawful issue of the adoptive parents, entitled to all rights and privileges, including the right of inheritance, the right to take under testamentary disposition and subject to all obligations of a child of such adoptive parents as if born to such adoptive parents.

10. I declare that in requesting that my parental rights be terminated, I am not acting under any duress or influence of anyone. I hereby waive notice of further proceedings in this matter.

11. I agree and desire that the attached order terminating the parent and child relationship between me and the above-named child be entered.

ATTORNEY GENERAL OF WASHINGTON
Grenwich Building
3501 Colby Avenue #200
Everett, WA 98201
(425) 257-2170

12. I have read, or have had read to me, the foregoing and hereby understand the same.

Date: 4/14/09

JOHN MICHAEL ROUSSEAU
Father

ORDER

The court having reviewed and accepted the foregoing Stipulation and finding that the Stipulation for termination of the parental rights of John Michael Rousseau in and to Julien Michael Rousseau was executed by him voluntarily and not under fraud or duress, now, therefore, it is hereby

ORDERED, ADJUDGED and DECREED that the parental rights and interests of John Michael Rousseau in and to the above-named child are terminated pursuant to RCW 13.34.190 and it is further

ORDERED, ADJUDGED and DECREED that the above-named child be placed in the **[temporary/permanent]** custody of the Washington State Department of Social and Health Services and that said agency is authorized to place the child with prospective adoptive parents and to consent to the child's adoption and it is further

ORDERED, ADJUDGED and DECREED that the child has two siblings; the status of the child's relationship with any sibling with whom the child has a relationship is unknown; the child's siblings are placed with the maternal grandmother in California and the extent of the contact between the child and the siblings is unknown; and it is further

ORDERED, ADJUDGED and DECREED that the Department of Social and Health Services shall have the right to inspect and copy all health, medical and education records of the above-named child. Any agency, hospital, doctor, nurse, or other health care provider, psychologist, psychiatrist, or mental health clinic, or health/medical records custodian or document management company or school organization, shall permit the Department of Social

ATTORNEY GENERAL OF WASHINGTON
Grenwich Building
3501 Colby Avenue #200
Everett, WA 98201
(425) 257-2170

and Health Services to inspect and obtain copies of any records relating to the child involved in this case, without the consent of the parent or guardian of the child, or of the child, unless such access is specifically prohibited by law.

[ ] This matter shall be set for a **Non-Contested Adoption Review Hearing** under the **dependency cause number 07-7-00614-8 on June 8, 2009, at 8:30 a.m.**, if the child has not been adopted or has not had a guardian appointed for him/her by such date.

[ ] Any **Non-Contested Review Hearings** set under the **dependency cause number 07-7-00614-8** shall be stricken.

[ ] Any **Permanency Planning Review Hearings** set under the **dependency cause number 07-7-00614-8** shall be stricken.

DATED this 14th day of April, 2009.

JUDGE

Presented by:

ROBERT M. MCKENNA
Attorney General

TAD ROBINSON O'NEILL, WSBA #37153
Assistant Attorney General

JOHN MICHAEL ROUSSEAU
Father

PETER LAWSON, WSBA #28886
Attorney for Father

MARTIN HODGES, WSBA #21818
Guardian ad Litem

ATTORNEY GENERAL OF WASHINGTON
Grenwich Building
3501 Colby Avenue #200
Everett, WA 98201
(425) 257-2170

Per Atty – this version not filed w/ sup ct. said Paralegal sent to us by mistake? Should discard

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH
JUVENILE COURT

IN RE THE WELFARE OF: J.M.R., DOB: 7/12/2002 Minor child under the age of eighteen.	NO. 08-7-00632-4 NOTICE OF APPEAL TO COURT OF APPEALS

TO: Tad Robinson-Oneil, Assistant Attorney General
Snohomish County VGAL Office, appointed VGAL

PLEASE TAKE NOTICE that John Charles Rousseau, respondent father of the above named minor child, the appellant herein, seeks review by Division I of the Court of Appeals of the Stipulation of and Order on Termination of Parent-Child Relationship Regarding Father entered on April 15, 2009.

Below signed attorney will file an Order of Indigency requesting appointment of counsel signed by the Snohomish County Superior Court, and has attached a copy of the Order of Indigency to this notice.

DATED this 13th day of May, 2009.

Peter C. Lawson, WSBA #28886
Attorney for John Rousseau, Respondent, father

ORIGINAL

JAY CAREY LAW OFFICES
420 North MacLeod
Arlington, WA 98223

I, Valerie Ruhoak, a person over 18 years of age, served
[list name address, telephone number and Washington State bar number for AAG]
Tad Robinson - Oneil
3501 Colby Ave. #700
Everett, WA 98201
a true and correct copy of the document to which this certification is affixed,
on 5/14/09
Service was made by delivery to ABC (Messaging Service ABC);
_____ (Personal Service); _____ (Depositing in the mails of the
United States of America, properly stamped and addressed).
Valerie Ruhoak
Signature

Under penalty of perjury under the laws of the State of Washington, I certify that a copy of this document was delivered from Everett Washington
on _____, 2009 to the attorneys and parties listed below, _____.

SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH

IN RE THE DEPENDENCY OF:	
J.M.R.	NO. 08-7-00632-4
d.o.b. 7/12/02	NOTICE OF APPEAL TO COURT OF APPEALS

COMES NOW the father, John Charles Rousseau, by and through his attorney of record, Peter C. Lawson, and seeks review by the Court of Appeals, Division I, of the Snohomish County Superior Court's termination of the father's parental rights of the above referenced child. The father wishes to appeal the Stipulation of and Order on Termination of Parent-Child Relationship Regarding Father entered against him on April 15, 2009.

A copy of the decision is attached to this notice.

DATED this 14th day of May, 2009.

Peter C. Lawson, WSBA# 28886
Attorney for John Rousseau, Father

JAY CAREY LAW OFFICES
420 North MacLeod
Arlington, WA 98223
(360) 435-5707

FILED

2009 APR 15 PM 2:36

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

ROU-10377881-TGR b

CL13827728

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

JUVENILE DIVISION

IN RE THE DEPENDENCY OF:	No. 08-7-00632-4 07-7-00614-8
ROUSSEAU, Julien Michael b.d. 07/12/02	**STIPULATION AND ORDER ON TERMINATION OF PARENT-CHILD RELATIONSHIP REGARDING FATHER**
	(Clerk's Action Required)

STIPULATION

I, John Michael Rousseau, the father of the above-named child, hereby stipulate to the following:

1. A petition seeking termination of my parental rights to the above-named child pursuant to RCW 13.34.180 was filed on April 30, 2008. I was served with the petition on April 18, 2008. The above-named child is not an Indian child as defined in 25 U.S.C. 1903.

2. I have been given notice of my right to be represented by an attorney, and I have been appointed an attorney.

3. The court has found the above-named child to be dependent pursuant to RCW 13.34.030(5), and the court has entered a Dispositional Order pursuant to RCW 13.34.130 which was filed on September 6, 2007.

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(425) 257-2170

45 EMT

4. Julien Michael Rousseau has been removed from my custody for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(5).

5. The services ordered under RCW 13.34.136 have been expressly and understandably offered or provided to me and all necessary services, reasonably available, capable of correcting my parental deficiencies within the foreseeable future have been expressly and understandably offered or provided to me.

6. There is little likelihood that conditions will be remedied so that the child can be returned to me in the near future.

7. Continuation of the parent and child relationship clearly diminishes the child's prospects of early integration into a stable and permanent home.

8. I realize that it is in the best interest of the above-named child that ~~all of my parental rights to Julien Michael Rousseau be permanently terminated~~ Julien Michael Rousseau be placed with the family where he is currently living permanently. (R)

9. I understand that the legal effect of this voluntary termination of my parental rights to the above-named child will be to divest me of all legal rights and obligations with respect to the child except for past due child support obligations. I also understand that the child will be freed from all legal obligations with respect to me, and shall be, for all legal purposes, the child, legal heir, and lawful issue of the adoptive parents, entitled to all rights and privileges, including the right of inheritance, the right to take under testamentary disposition and subject to all obligations of a child of such adoptive parents as if born to such adoptive parents.

10. I declare that in requesting that my parental rights be terminated, I am not acting under any duress or influence of anyone. I hereby waive notice of further proceedings in this matter.

11. I agree and desire that the attached order terminating the parent and child relationship between me and the above-named child be entered.

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12. I have read, or have had read to me, the foregoing and hereby understand the same.

Date: 4/14/09

JOHN MICHAEL ROUSSEAU
Father

ORDER

The court having reviewed and accepted the foregoing Stipulation and finding that the Stipulation for termination of the parental rights of John Michael Rousseau in and to Julien Michael Rousseau was executed by him voluntarily and not under fraud or duress, now, therefore, it is hereby

ORDERED, ADJUDGED and DECREED that the parental rights and interests of John Michael Rousseau in and to the above-named child are terminated pursuant to RCW 13.34.190 and it is further

ORDERED, ADJUDGED and DECREED that the above-named child be placed in the **[temporary/permanent]** custody of the Washington State Department of Social and Health Services and that said agency is authorized to place the child with prospective adoptive parents and to consent to the child's adoption and it is further

ORDERED, ADJUDGED and DECREED that the child has two siblings; the status of the child's relationship with any sibling with whom the child has a relationship is unknown; the child's siblings are placed with the maternal grandmother in California and the extent of the contact between the child and the siblings is unknown; and it is further

ORDERED, ADJUDGED and DECREED that the Department of Social and Health Services shall have the right to inspect and copy all health, medical and education records of the above-named child. Any agency, hospital, doctor, nurse, or other health care provider, psychologist, psychiatrist, or mental health clinic, or health/medical records custodian or document management company or school organization, shall permit the Department of Social

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and Health Services to inspect and obtain copies of any records relating to the child involved in this case, without the consent of the parent or guardian of the child, or of the child, unless such access is specifically prohibited by law.

[ ] This matter shall be set for a **Non-Contested Adoption Review Hearing** under the **dependency cause number 07-7-00614-8 on June 8, 2009, at 8:30 a.m.**, if the child has not been adopted or has not had a guardian appointed for him/her by such date.

[ ] Any **Non-Contested Review Hearings** set under the **dependency cause number 07-7-00614-8** shall be stricken.

[ ] Any **Permanency Planning Review Hearings** set under the **dependency cause number 07-7-00614-8** shall be stricken.

DATED this 14th day of April, 2009.

JUDGE

Presented by:

ROBERT M. MCKENNA
Attorney General

TAD ROBINSON O'NEILL, WSBA #37153
Assistant Attorney General

JOHN MICHAEL ROUSSEAU
Father

PETER LAWSON, WSBA #28886
Attorney for Father

MARTIN HODGES, WSBA #21818
Guardian ad Litem

13:24:13 Wed May 27, 2009

JSM005 DISPLAY NAMES **SNOHOMISH** SUPERIOR 05-27-09 13:24 1 OF 3
CASE#: 08-7-00632-4
TITLE: DEPENDENCY OF JULIEN ROUSSEAU

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	BORN
DEP01	ROUSSEAU, JULIEN MICHAEL		
NmCd	IN 489 18018		
AKA	ROUSSEAU, JULIEN MICHAEL		
NmCd	IN 144 52825		
PAR01	ROUSSEAU, JOHN CHARLES	TRM 04-15-2009	
NmCd	IN 016 56214		
AKA	ROUSSEAU, JOHN CHARLES C/O DEEBBIE MCGRATH		
NmCd	IN 976 63952		
AKA	ROUSSEAU, JOHN		
NmCd	IN 188 97986		
AKA	ROUSSEAU, JOHN CHARLES		
NmCd	IN 038 66682		
AKA	ROUSSEAU, JOHN C		
NmCd	IN 916 27134		

? F1=Help F5=DspAtty F6=SrchAtty F7=Bwd F8=Fwd PA1=Can

JSM005 DISPLAY NAMES **SNOHOMISH** SUPERIOR 05-27-09 13:24 2 OF 3
CASE#: 08-7-00632-4
TITLE: DEPENDENCY OF JULIEN ROUSSEAU

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	BORN
AKA	ROUSSEAU, JOHN ANTHEY		
NmCd	IN 57A 74275		
PAR02	PORTER, ANGELIQUE CHEREE	TRM 04-15-2009	
NmCd	IN 750 68930		
AKA	PORTER, ANGELIQUE C		
NmCd	IN 046 77371		
AKA	PORTER, ANGEL C		
NmCd	IN 043 66345		
AKA	PORTER, ANGELIQUE C		
NmCd	IN 492 07165		
CWO01	WATSON, RENATTA		
GAL01	STONE, RALEIGH		
AAG01	O NEILL, THOMAS ROBINSON		
BAR#	37153		
ATD01	LAWSON, PETER CARL		
BAR#	28886		

?

F1=Help F5=DspAtty F6=SrchAtty F7=Bwd F8=Fwd PA1=Can

JSM005 DISPLAY NAMES **SNOHOMISH** SUPERIOR 05-27-09 13:24 3 OF 3
CASE#: 08-7-00632-4
TITLE: DEPENDENCY OF JULIEN ROUSSEAU

CONN.	LAST NAME,	FIRST MI	TITLE	LITIGANTS	BORN
ATD02	COOMBS,	JENNIFER LYN			
BAR#	26435				

?

F1=Help F5=DspAtty F6=SrchAtty F7=Bwd F8=Fwd PA1=Can

Case#: 63514-0

In re the Dependency of: J.M.R.; John Charles Rousseau, App. v. DSHS, Res.

SNOHOMISH COUNTY SUPERIOR COURT - Trial Case#: 08-7-00632-4
Judgment Date: 04/15/2009 Judge Name: Weiss, Bruce I Court Commissioner

Attorney(s) for John Charles Rousseau (Appellant)

Peter Carl Lawson Jay Carey Law Offices 420 N Macleod Ave PO Box 190 Arlington Washington 98223-0190	
Bar Number:	28886
Work phone number:	360-435-5707

Attorney(s) for J.M. R. (Guardian ad Litem)

Martin Wade Hodges Attorney at Law Denny Juvenile Justice Center 2801 10th St 2nd Fl Everett Washington 98201-1414	
Bar Number:	21818
Work phone number:	425-388-7989

Attorney(s) for Angelique Cheree Porter (Other Party)

Jennifer Lyn Coombs Attorney at Law 1223 Broadway Everett Washington 98201-1715	
Bar Number:	26435
Work phone number:	425-252-0797

Attorney(s) for Department of Social and Health Services (Respondent)

Thomas Robinson O Neill WA Attorney General 3501 Colby Ave Ste 200 Everett Washington 98201-4795	
Bar Number:	37153
Work phone number:	425-257-2170

Trial Court Roles	Participant Names
ATTY FOR DEFENDANT	COOMBS, JENNIFER LYN
ATTY FOR DEFENDANT	LAWSON, PETER CARL
ASSISTANT ATTORNEY GENERAL	O NEILL, THOMAS ROBINSON
PARENT	PORTER, ANGELIQUE CHEREE
PARENT	ROUSSEAU, JOHN CHARLES
DEPENDENT	ROUSSEAU, JULIEN MICHAEL
GUARDIAN AD LITEM	STONE, RALEIGH
CASE WORKER	WATSON, RENATTA

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In Re the Dependency of J.M.R.,	)	
	)	
STATE OF WASHINGTON/DSHS,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 64711-3-I
	)	
JOHN ROUSSEAU,	)	
	)	
Appellant.	)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF APRIL 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] THOMAS O'NIELL
ATTORNEY GENERAL'S OFFICE
3501 COLBY AVENUE
SUITE 200
EVERETT, WA 98201

[X] JOHN ROUSSEAU
200 2ND STREET
SULTAN, WA 98290

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF APRIL 2010.

x Patrick Mayovsky